

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5672 OF 2026

Motiram Villa Cooperative
Housing Society Limited

... Petitioner

V/s.

Pratidnya Shripal Shete & Ors.

... Respondents

ATUL
GANESH
KULKARNI

Digitally signed
by ATUL GANESH
KULKARNI
Date: 2026.04.30
10:30:32 +0530

Mr. Ronak Utagikar for the petitioner.

Mr. Mandar Limaye for respondent No.1.

Mr. S.S. Panchpor for respondent No.3.

Mr. Hamid D. Mulla, AGP for State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 29, 2026

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. The challenge in this writ petition is coming from an order passed by the Cooperative Appellate Court, by which earlier order of the Cooperative Court is set aside. The Cooperative Court had decided interim relief application in a dispute filed by the present petitioner which is a Cooperative Housing Society. Because of such setting aside of interim order, the petitioner is now before this Court.
3. It appears that the petitioner-Society had approached the Cooperative Court by filing a dispute seeking declaration that certain general body resolutions are binding upon all concerned

opponents. These resolutions are referred in prayer clause 28(a). The Society has further asked for declaration that opponent No.1 has no authority to obstruct or halt redevelopment process which is undertaken based on decision of general body. The Society is also asking for consequential relief. That relief is in nature of interim mandatory injunction, by which opponent No.1 is required to hand over possession. Such relief is serious in nature because it affects possession. Therefore, while granting or refusing such relief, Court is required to consider balance of convenience, prima facie case, and also urgency of situation. The Society's case appears to be that redevelopment cannot proceed unless possession is obtained from all members, and therefore delay by one member creates larger prejudice to entire body of members.

4. The Cooperative Court, by its order dated 26 February 2026, has recorded a finding that decision to redevelop the society is taken by requisite majority of members. This finding is important because in cooperative structure, Will of majority is given importance unless it is shown to be illegal. Based on such finding, the Cooperative Court has directed opponent No.1 to hand over possession. Further, the Court has also provided that in case opponent No.1 does not comply, then Court Receiver shall take possession. Appointment of Court Receiver is done when Court feels that enforcement of its order requires assistance of its own machinery. This shows that Cooperative Court was satisfied that relief was necessary and immediate.

5. Opponent No.1 then challenged this order before the Cooperative Appellate Court. Before that Court, opponent No.1

raised a contention that the order was passed without giving opportunity of hearing. This contention relates to principles of natural justice. It is always required that party must be heard before order affecting rights is passed. However, the Society opposed this contention by pointing out that opponent No.1 was served at her registered address. Once service is effected at registered address, law presumes that service is complete. Therefore, absence of party after due service cannot automatically lead to conclusion that there is breach of natural justice. It must be seen whether service was proper and sufficient. If it is so, then party cannot take advantage of her own absence.

6. However, the Cooperative Appellate Court appears to have set aside the order of the Cooperative Court mainly on a different ground. That ground is existence of an independent dispute between opponent No.1 and some alleged transferee of her rights. The Appellate Court has referred to a suit for specific performance filed by third party against opponent No.1, in which decree is passed. According to the Appellate Court, because of this dispute, there is uncertainty as to who is entitled to receive transit rent and other benefits arising from redevelopment. On that basis, the Appellate Court has interfered with the order. This reasoning shows that Appellate Court has considered a collateral issue which is not directly part of the dispute before the Cooperative Court.

7. In my opinion, such reasoning cannot be accepted as relevant for deciding application for temporary relief filed by the Society. The dispute before the Cooperative Court was limited. It was concerning implementation of redevelopment decision and

obtaining possession from opponent No.1. The inter se dispute between opponent No.1 and her alleged transferee does not affect the right of Society to proceed with redevelopment once majority decision is taken. The question as to who will receive transit rent can always be decided separately. It cannot become ground to stall entire redevelopment process. In matters of redevelopment, delay causes serious prejudice to all members. It is well settled that small minority cannot obstruct redevelopment which is approved by majority, unless there is clear illegality. Therefore, while considering temporary relief, the Court must focus on whether Society has made out prima facie case and whether obstruction by one member is unjustified. The Appellate Court has failed to keep this focus and has travelled into an area which is not relevant for the purpose of interim relief. Such approach results in miscarriage of justice because it allows irrelevant factors to control decision.

8. Hence, upon overall consideration of the material submissions and findings recorded above, the order passed by the Cooperative Appellate Court cannot be sustained. The interference made by it is not based on relevant considerations. Therefore, the writ petition deserves to be allowed. Rule is made absolute in terms of prayer clause (b).

9. There shall be no order as to costs. This is because the dispute arises out of internal matters of society and parties have been pursuing their remedies under law.

10. The Court Receiver shall forthwith execute the order of the Cooperative Court. Immediate execution is necessary because

redevelopment process is time-bound and any delay will defeat its purpose.

11. At this stage, learned Advocate for respondent No.1 has requested for stay of this order. However, considering that the Cooperative Court had already granted relief and same requires prompt implementation, no case is made out for grant of stay. The request is therefore rejected.

(AMIT BORKAR, J.)